Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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School of Federal Administrative Law.

Announcement is made of the inauguration by the law department of the National University at Washington of a school of Federal administrative law. The purpose of this experiment seems to be to fit students for government positions which require legal knowledge of a special kind. It is doubtless true that there are many positions under the government which require a knowledge of a peculiar and special line of legal questions. A new appointee to such a position, though he has had a good legal training of the ordinary kind, doubtless finds that he has to depend very largely upon subordinates who have by experience learned the particular matters to be dealt with. This will quite certainly continue to be true in greater or less degree. But it does not seem improbable that a course of the kind proposed might do much to fit men for these positions, and thereby improve the public service.

Tender of Smooth Coin.

Current newspapers are discussing the right to tender a smooth coin as payment. The question is said to have arisen in some recent case, where the judge held that the fact that a coin was worn smooth did not entitle a person to refuse it. This question was discussed in CASE AND COMMENT some years ago, with a reference to the Georgia case of Atlanta Consolidated St. R. Co. *v.* Keeny, 33 L. R. A. 824, and the note thereto. The Georgia case held that a genuine silver coin of the United States, if distinguishable as such, though rare and peculiar in appearance, was a good legal tender. In the note to the case reference is made to some other decisions in which worn or mutilated silver coins are also held to be legal tender for their original value. The depreciation in the value of gold coins in proportion to their loss of weight by abrasion or otherwise is provided for by the United States Revised Statutes, § 3585, when the loss is more than ½ of 1 per centum, but the statutes make no provision with respect to the loss of weight of silver coins, and therefore they are held to be legal tender for their original value so long as their genuineness and identity can be distinguished.

The Case of the Northern Securities Company.

Original jurisdiction of the Supreme Court of the United States over the case of the State of Minnesota *v.* The Northern Securities Company was recently denied. The constitutional jurisdiction of that court over a suit by a state against a citizen of another state was invoked, but in-

effectually because, while the defendant was a citizen of New Jersey, railroad corporations of the state of Minnesota were also necessary parties. The suit was for an injunction to restrain the New Jersey corporation from interfering with or holding stock in certain Minnesota railroad companies, and it was held that those companies were necessary parties, not only for the protection of the interests of such of their stockholders as might not be stockholders in the Northern Securities Company, but also for the protection of the interests of the public. The right of a state to sue a citizen of another state in the United States Supreme Court is clearly limited by authority to a case in which the defendants do not include any citizens of the plaintiff state. The case of California *v.* Southern Pacific Co. 157 U. S. 229, 39 L. ed. 683, is clear authority on this point. Therefore, if the Minnesota railroad companies were necessary parties, the result was a foregone conclusion. But the collapse of this suit ends one phase only of the litigation against this great company.

Fortunes Flowing Away.

Latent wealth, undreamed of, doubtless lies about us on every side. But there are some sources of wellnigh unlimited wealth that are known yet still neglected. Down our streams and rivers every year, flowing to the sea, go neglected fortunes greater than the wealth of South African mines.

The commercial value of the water power of Niagara has dazzled the imagination of manufacturers all over the world, but the water power of Niagara is insignificant in comparison with the aggregate of the unsaved power which might easily be saved and used on multitudes of our streams and rivers. Some of them which afford unexcelled manufacturing power for a part of the year are yet little valued for this because for the rest of the year the power fails. A few feeble beginnings have been made in some places toward the saving, by storage dams or other means, of the surplus water which would otherwise run to waste, for use when naturally the stream would be nearly dry, and thus making the flow of the stream more constant. It is certain that the possibilities in this direction are vast.

For irrigation, as well as for manufacturing power, there is the same great opportunity to save wealth now wasted. This problem of irrigation, while of supreme importance in our western country, where it is fully recognized, is of no small importance in other portions of the country, where streams and hillsides often furnish easy opportunities for safeguards against drought. It is safe to predict that the future will show far greater attention in the East, as well as in the West, to the utilization of water now running to waste, not only to create manufacturing power, but to refresh the thirsty ground and insure the crops against drought.

The menace of floods is another element in the same problem. The destruction of property each year by flood is immense. This actual destruction of existing wealth must be added to the vast sum of potential wealth which is allowed to flow away unsaved, when we are considering the value of a proper regulation of the flow of streams. There is now pending in the legislature of New York a bill to appoint what shall be known as a "water storage commission" to investigate the causes of floods and overflows of rivers and watercourses, and to make recommendations for preventing them. The bill properly provides that the citizens appointed shall serve without salary, but shall have their expenses paid by the state. This indicates that the commission will be appointed, not to make places for politicians, but to investigate a matter of extraordinary public importance. It ought to be but the beginning of a movement which shall result in adding immeasurably to the wealth of the country.

College Degrees for Entrance to Law Schools.

Much discussion among law-school men has been had in recent years over the restriction of the privileges of law schools to college men. There is no doubt that college graduates take higher rank on the average than others. There is no doubt that they are ordinarily better equipped for successful study of the law than those who have not had the advantages of college training. But an arbitrary rule to exclude from law school all who have not graduated from a college is not justified by those facts.

Because most men without a college training are not as well qualified as they ought to be for law study it by no means follows that none of them are. To exclude them all because most of them lack training is not logical nor just, neither does it seem to be a very creditable solution of the problem, though it may be an easy one. If law schools wish to accept college diplomas as a basis of admission, let them do so; but what is to hinder their giving entrance examinations for other persons, which shall be entirely adequate to test their qualifications for studying law? If the examinations are not adequate to that purpose they show the incompetency of the instructors who prepare them. It is indeed true that men may have acquired an amount of information sufficient to pass such examinations as are frequently given, without having well-trained minds. But an instructor of the proper ability can frame an examination paper which will test, not merely the information, but also the reasoning power and the intellectual training, of the student. To refuse to give even an examination to men who are entirely able to do creditable work as law students and practitioners because their education has not been obtained in the regular college course, is not reasonable. Severe tests of fitness for the legal profession ought to be approved, but those tests ought to search out the ability and fitness of the applicant, and not the mere fact of his possession of a collegiate degree. Let every law school make its requirements as rigid as it will, but at least give an applicant an opportunity to demonstrate that he possesses the required qualifications, and not indulge in the presumption that intellectual attainments and power can be acquired only by some stereotyped or patented process.

Baggage Without a Passenger.

The rights of a person who does not travel on the same train with a trunk which he has had checked as baggage are surprisingly limited in the recent Michigan case of Marshall *v.* Pontiac, Oxford, & Northern Railroad Company. The court holds that, if he purchased the ticket for the sole purpose of checking baggage, with the intention of himself going to the place of destination in a private conveyance, the carrier could be held liable for the baggage only as a gratuitous bailee, and therefore was not responsible, in the absence of gross negligence, if the trunk was stolen from its baggage room. In these days when baggage is very frequently sent on a train other than that on which the passenger rides it is somewhat startling to be told, in the language of the court in this case, that "baggage implies a passenger who intends to go upon a train with his baggage and receive it upon the arrival of the train at the end of the journey." If that was ever true, it has certainly ceased to be true, for it is an everyday occurrence that railroad companies, either for their own convenience or for the convenience of a passenger by train, carry his trunk on an earlier or later train. In fact, their time tables expressly say that certain trains which carry passengers will not take baggage, and that this must go by other trains. The court says that a baggage master has no authority or right to check baggage for any other than a passenger, and therefore, if the purchaser of the ticket had disclosed to the baggage master the fact that he intended not to go upon the train, but to travel by his private conveyance, "he would have been refused the check." It is, of course, impossible to say that no baggage master would ever refuse to check baggage under such circumstances; but it is not easy to believe that any baggage master, or any railroad official, would decline to check a trunk on a ticket regularly purchased, merely because he knew that the company would not have to carry its owner also.

The reason of the matter seems plain under the modern customs of transportation. When a person buys a railroad ticket, by common understanding it gives him two privileges: First, to ride as a passenger on the train; second, to have his baggage checked and transported. To hold that he must necessarily avail himself of both privileges in order to have either does not seem reasonable. The waiver of one privilege or right under a contract does not imply the waiver of another and distinct right or privilege. If the transportation of the baggage were, in the nature of things, so intimately connected with the transportation of the passenger that the railroad company's

obligation with respect to the baggage would be made more onerous by the passenger's failure to ride on the train, there would be good reason for holding that such failure on his part might reduce the company's liability for the baggage; but no one can contend that such is the case.

The present custom of checking and carrying baggage is very different from the old practice of allowing a passenger by stage to take his luggage along with him under his own eye, without having obtained any check for it. Now the passenger gets a check for his baggage. It is taken under the carrier's exclusive control and severed from the owner for the purpose of transportation as utterly as if it belonged to another passenger. It is put in a car beyond the owner's reach and beyond his sight. He has no authority over it. It is not in his custody. He could not get to it if he would, and, so far as the company's care of it is concerned, he might as well be nonexistent until the destination is reached. Of course, the carrier is entitled to have the baggage called for and taken away within a reasonable time after it reaches destination, but this right is no less because the passenger travels on the same train, or no greater if he does not. In any event the liability as carrier changes to a liability as warehouseman after a reasonable time to claim the baggage. When passenger transportation was chiefly by stage and the baggage constantly under the passenger's eye, there might have been some reason in holding that the passenger must accompany his baggage, but for modern railroad transportation the necessity of the passenger's traveling with his baggage, if it exists, must be based, not on reason, but upon precedents that have outlived the reasons which created them.

The authorities relied upon by the Michigan court for this decision do not sustain it. The first one is the case of The Elvira Harbeck, 2 Blatchf. 336. This was the case of baggage not checked as such, but which was left behind by a passenger on a vessel and taken by a later vessel, which gave a receipt or bill of lading for it. The United States district court held that this baggage was carried gratuitously, but this decision was reversed by the circuit court on the ground that the carrier was entitled to reasonable freight money and to a lien therefor, and therefore the vessel was held liable for the loss of the baggage. So far from supporting the Michigan decision, this case, to the extent that it is pertinent, is opposed to it, and holds the carrier liable for the loss. Another authority cited is that of Wilson *v.* Railway Company, 56 Me. 60. But neither was this a case of baggage regularly checked for a person who did not go with it. It was a case in which the owner went forward without his baggage and made no arrangement for its transportation. Two or three days afterward someone brought his trunk to the station, and, on representing that the owner had previously gone over the road, the trunk was taken and sent forward, but no check was given for it and nothing was said with respect to its being considered as baggage. The trunk was lost. A judgment against the railroad company was reversed on exceptions to instructions in 56 Me. 60. After another trial the case was again passed upon in 57 Me. 138, where the court held that it made no difference whether the parcel carried was a trunk or a barrel of flour; that there was no evidence of any agreement to carry it as baggage. The case was disposed of as one for the transportation of freight, and the owner was held to be under an implied obligation to pay for carrying it, and the railroad company was held liable for its loss. This case also is therefore an authority, so far as it is pertinent, not in support of, but against, the Michigan decision. These are the only cases which the court cites that involved any question of liability for carrying baggage without a passenger.

The high respect paid to the decisions of the supreme court of Michigan makes this decision unfortunate, and emphasizes the need of showing the error therein, if any, before it is followed by other courts. Not even the decision of so eminent a court can make it appear reasonable to hold that baggage regularly checked on a ticket bought and paid for is transported by the carrier as a gratuitous bailee merely because the owner does not ride with it,—especially when it is a common practice to carry them on different trains. The court, without going into any elaborate argument on the reason of the matter, seems to have felt bound by the precedents cited, but these were certainly misinterpreted.

Index to New Notes
IN
LAWYERS' REPORTS, ANNOTATED.

Book 54, Parts 3 and 4.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Adverse Possession.

A railroad right of way is held in Southern P. Co. *v.* Hyatt (Cal.) 54 L. R. A. 522, to be of such a public nature that title thereto cannot be acquired against the company by prescription or the running of the statute of limitations.

Adverse possession of a portion of a railroad right of way for a period exceeding that designated by the statute of limitations for the recovery of real property is held in Northern P. R. Co. *v.* Ely (Wash.) 54 L. R. A. 526, to bar a right of action to recover possession thereof.

Animals.

Injury inflicted by savage dogs upon one who had entered the premises of the owner by his request is held in Delisle *v.* Bourriague (La.) 54 L. R. A. 420, to render the latter liable.

Bankruptcy.

Liability upon a penal bond conditioned for the payment of rents and annuities to another during life is held in Cobb *v.* Overman (C. C. A. 4th C.) 54 L. R. A. 369, to be within the provisions of the bankruptcy act of 1898, allowing the proving against the bankrupt's estate of a fixed liability, evidenced by instrument in writing, absolutely owing at the time of filing the petition, whether then payable or not.

Benevolent Societies.

A provision in the constitution of a benefit society, that members shall become such subject to the power of the corporation to change its by-laws, is held in Bragaw *v.* Supreme Lodge K. & L. of H. (N. C.) 54 L. R. A. 602, not to permit the society to change at will the contract it has made with each member.

A mere general consent by a member of a mutual benefit society that the constitution and by-laws may be amended is held in Strauss *v.* Mutual Reserve Fund L. Asso. (N. C.) 54 L. R. A. 605, to apply only to

such reasonable regulations as may be within the scope of its original design, and not to authorize changes which will destroy the value of his contract.

Bills and Notes.

One who signs a promissory note in the name of another, by himself as attorney in fact, but who, to the knowledge of the payee and a subsequent indorsee, has no authority to use the other's name, and who refuses their solicitation to sign his own name and bind himself personally, is held in Kansas National Bank v. Bay (Kan.) 54 L. R. A. 408, not to be liable upon the note as his contract, although it is given in a transaction of his own, and the name signed to the note is generally used by him as a trade-name.

Bonds.

The amount of the bond to be executed by a person making application for a license to sell intoxicating liquors, which is fixed by statute, is held in State v. Larson (Minn.) 54 L. R. A. 487, to be a penalty, and not in the nature of liquidated damages, to be recovered as an entire sum in case any of the conditions of the bond are violated.

Building and Loan Associations.

The rule that the minimum premium which a building and loan association may fix to be deducted in advance or paid in instalments must, in any case, be a certain, definite sum, fixed and determined at the time of the making of the loan, is held in Floyd v. National Loan & Investment Co. (W. Va.) 54 L. R. A. 536, to apply to a foreign building association, and a contract which does not conform to this requirement is held not to be within the exemption from the operation of the usury laws given by statute to domestic building and loan associations.

Certiorari.

A military examining board provided by the Constitution and statutes to determine the moral character, capacity, or general fitness of officers of the militia, and having within its jurisdiction the powers of a court-martial, and upon whose findings the governor may dismiss an officer from the service, is held in People ex rel. Smith v. Hoffman (N. Y.) 54 L. R. A. 597, to be a judicial body whose determination may be reviewed by a common-law writ of certiorari.

Conflict of Laws.

A written promise of a married woman made in a foreign state where it is valid is held in Thompson v. Taylor (N. J. Err. & App.) 54 L. R. A. 585, to be enforceable in New Jersey, although it would be void if made in the latter state.

Constitutional Law.

A statute prohibiting the sale of cream that contains less than 20 per cent of fat is held in State v. Crescent Creamery Co. (Minn.) 54 L. R. A. 466, to be a valid exercise of the police power, and constitutional.

Contracts.

See also CONFLICT OF LAWS.

An agreement that, for a pecuniary consideration, a person will withdraw opposition to the granting of a pardon, and will endeavor to induce the pardoning authority to grant a pardon to one who has been convicted of a crime, is held in Deering & Co. v. Cunningham (Kan.) 54 L. R. A. 410, to be against public policy and void.

The fact that at the time of signing a note the maker is voluntarily intoxicated, to the extent that he cannot give proper attention to it, is held in Wright v. Waller (Ala.) 54 L. R. A. 440, not to render the note void.

Corporations.

See also TRUSTS.

Under a writing entitled "Escrow," instructing a depositary to deliver stock to a third person in case he pays therefor on or before a certain date, it is held in Clark v. Campbell (Utah) 54 L. R. A. 568, that no title passes to the vendee until payment is made, so as to entitle him to dividends on the stock declared between the times of deposit and payment.

Damages.

Damages for personal injuries caused by an explosion of an acetylene gas machine are held in Tyler v. Moody & Offutt (Ky.) 54 L. R. A. 417, to be recoverable in an action for breach of warranty of its safety.

Death.

See EXECUTORS AND ADMINISTRATORS; WITNESSES.

Evidence.

Evidence tending to show that a party to an action tried to bribe a witness to give false testimony in his favor is held in Nowack v. Metropolitan Street R. Co. (N. Y.) 54 L. R. A. 592, to be competent as an admission of weakness in his case.

A cause of action against a railroad company for negligently killing a person, which is created by statute for the benefit of the persons named, and is enforceable only by his administrator, is held in Re Mayo (S. C.) 54 L. R. A. 660, to give jurisdiction to the probate court of the county where the killing occurred, to grant letters of administration on the estate, although the deceased was not a resident of the state, and owned no other estate within its limits at the time of his death, and the statutes provide, in case of a nonresident, for administration only in the county where the greater part of his estate may be.

Food.

See also CONSTITUTIONAL LAW.

A statute providing that any person who manufactures or sells any substance made in resemblance of lard, or as an imitation thereof, shall cause the package containing it to be labeled "Lard Substitute," is held in State v. Hanson (Minn.) 54 L. R. A. 468, to forbid the sale of cottolene, unless the package is labeled as provided in the statute.

Highways.

The macadamized portion alone of a street 40 feet wide, of which about 25 are paved with cobble stones and the remainder macadamized, is held in Winter v. Harris (R. I.) 54 L. R. A. 643, not to be the traveled part within the meaning of a statute requiring travelers by carriage to keep to the right of the center of the traveled part of the road, and therefore a traveler injured by collision while needlessly on the left of the center of the whole width of road is held not to absolve himself from fault by showing that he was to the right of the center of the macadamized part.

Homicide.

Upon trial of an indictment for conspiring to commit murder, the fact of defendant's intoxication at the time of the commission of the offense is held in Booher v. State (Ind.) 54 L. R. A. 391, to be properly considered by the jury as bearing upon the existence of the felonious intent necessary to render him guilty.

Husband and Wife.

A mutual agreement between husband and wife to separate on friendly terms, and to make no future demands upon each other's property, carried out until the wife's death, is held in Foote v. Nickerson (N. H.) 54 L. R. A. 554, not to prevent the husband from claiming his rights in her estate.

Injunction.

An injunction to restrain a representative of a labor union from enticing apprentices to break their contract and become members of the union, is held in Flaccus v. Smith (Pa.) 54 L. R. A. 640, to be properly granted at the instance of a manufacturer whose apprentices are under express contract not to join a labor union.

Insurance.

Recovery upon a contract of life insurance not procured by the insured with the intention of committing suicide is held in Campbell v. Supreme Conclave I. O. H. (N. J. Err. & App.) 54 L. R. A. 576, not to be defeated by his suicide, unless the contract so provides in express terms.

Intoxication.

See CONTRACTS; HOMICIDE.

within its jurisdiction the powers of a court-martial, and upon whose findings the

the stock declared between the times of deposit and payment.

Judgment.

A judgment against a nonresident, entered on a note containing a power of attorney to confess judgment, which is valid in the state where entered, is held in Crim *v.* Crim (Mo.) 54 L. R. A. 502, to be entitled to full faith and credit in other states.

In an action against a railroad company and its conductor for an injury caused by the alleged negligence of the conductor a verdict in favor of the latter is held in Doremus *v.* Root (Wash.) 54 L. R. A. 649, to preclude a judgment against the company.

Jury.

A statute providing that three fourths of the jurors sitting in a civil case may concur in and render a verdict is held in First National Bank *v.* Foster (Wyo.) 54 L. R. A. 549, not to be authorized by a constitutional provision that in civil cases the jury may consist of less than twelve men, since the legislature is given no power to dispense with the unanimity of a verdict.

Labor Unions.

See INJUNCTION.

Limitation of Actions.

Damages for injuries growing out of a continuing nuisance, which have accrued within the statutory period before the commencement of the action, although more than the statutory period has elapsed since the completion of the work, are held in Doran *v.* Seattle (Wash.) 54 L. R. A. 532, to be recoverable.

Master and Servant.

See also INJUNCTION; JUDGMENT.

A master's liability for injury to a servant by a defective tool furnished for his use is held in Noble *v.* Bessemer Steamship Co. (Mich.) 54 L. R. A. 456, not to be defeated by the fact that the defective condition was known to a fellow servant who procured the tool for use by himself and the injured one.

A shed of a third person under which a railroad company runs a spur track is held in Doyle *v.* Toledo, S. & M. R. Co. (Mich.) 54 L. R. A. 461, to be within the rule that the working place furnished by the master must be reasonably safe.

A railroad company which fails to provide suitable rules and regulations for the control and operation of hand cars used by bridge gangs in coming to and from a station to places where they are engaged in the repair and construction of bridges is held in Wallin *v.* Eastern R. Co. (Minn.) 54 L. R. A. 481, to be guilty of negligence.

One who hires a gang of workmen and furnishes them to a third person, together with a time keeper, who is to impart to them the latter's orders as to the time and place to work, is held in Swackhamer *v.* Johnson (Or.) 54 L. R. A. 625, not to be liable for trespasses committed by them in cutting timber upon a stranger's land under direction of such third person, although he is to pay the wages and has power to discharge the men, where he is ignorant of the trespass and has no voice in directing the laborers when and where to work.

The owner of a theater is held in Paulton *v.* Keith (R. I.) 54 L. R. A. 670, not to be liable for the unauthorized act of his manager in obstructing the service of process upon an actor employed in the theater.

Mortgage.

A power of sale inserted in a real-estate mortgage is held in Grandin *v.* Emmons (N. D.) 54 L. R. A. 610, to be a power coupled with an interest, and is not revoked or suspended by the death of the mortgagor.

Municipal Corporations.

Neither the general police power, nor charter authority to provide for the health and cleanliness of the city, is held, in *Re* Wygant *v.* McLauchlan (Or.) 54 L. R. A. 636, to authorize a municipal ordinance prohibiting all interments within the city limits, unless such prohibition is reasonable.

A municipal corporation which, in constructing a sewer in a public street, leaves a manhole uncovered for several weeks, and near it a pile of sand, with knowledge that children are accustomed to play in the sand, is held in South Bend *v.* Turner (Ind.) 54 L. R. A. 396, to be liable for injuries to a child who, while at play, falls into the manhole and is injured.

paved with cobble stones and the remainder macadamized, is held in Winter *v.* Harris (R. I.) 54 L. R. A. 643, not to be the trav-

Intoxication.

See CONTRACTS; HOMICIDE.

Negligence.

The accidental shooting of a man upon a highway by an employee in a slaughter house, who was shooting at dogs that had caused annoyance and trouble about the place, is held in Cleghorn *v.* Thompson (Kan.) 54 L. R. A. 402, not to render either employer or employee liable, as the shooting of the man was entirely accidental, and was due to the deflection of the course of the bullet in some manner except for which it could never have reached the highway.

The modification of the rule that one guilty of contributory negligence cannot recover for injuries negligently inflicted, which permits a recovery in case defendant might, after discovering plaintiff's peril, have avoided the injury, is held in Baltimore Consol. Ry. Co. *v.* Armstrong (Md.) 54 L. R. A. 424, to be inapplicable, where plaintiff, in attempting to put a parcel on the front platform of a street car, negligently stood on the side toward the other track, and, upon perceiving a car approaching, became confused and got caught between the cars and was injured.

A woman who, seeing a car which had been derailed while a flying drill was being made coming out of the limits of a freight yard and across a public street at great speed towards the place where she was standing, ran for safety and fell, is held in Tuttle *v.* Atlantic City R. Co. (N. J. Err. & App.) 54 L. R. A. 582, to be entitled to recover for the injury thereby received.

Notice.

See MORTGAGE.

Nuisance.

See also LIMITATION OF ACTIONS.

Compliance with the specific directions for the abatement of the nuisance, in a decree enjoining the conducting of a business in such a way that the dust and fumes therefrom constitute a nuisance, is held in Northwood *v.* Barber Asphalt Pav. Co. (Mich.) 54 L. R. A. 454, not to absolve defendant from liability to punishment for contempt in failing to obey the general clause of the decree in case such directions prove insufficient.

To warrant an injunction restraining, as a threatened nuisance, the erection of a building proposed to be used for legitimate purposes, it is held in Chambers *v.* Cramer (W. Va.) 54 L. R. A. 545, that the fact that it will be a nuisance if so used must be made clearly to appear, beyond all ground of fair questioning.

Officers.

The salaries of public officers receiving no more than $5,000 per year are held in Dickinson *v.* Johnson (Ky.) 54 L. R. A. 566, to be exempt, on grounds of public policy, from the payment of their debts.

Pardon.

See CONTRACTS.

Partnership.

Members of an insolvent partnership, if in good faith, and all the partners consent, are held in Kincaid *v.* National Wall Paper Co. (Kan.) 54 L. R. A. 412, to be entitled to appropriate their own interest in the partnership property to the payment of their individual debts in preference to those of the partnership.

A partner who, upon dissolution of the partnership and exhaustion of the social assets, pays a judgment subsequently recovered against it on partnership debts, is held in Sands's Administrator *v.* Durham (Va.) 54 L. R. A. 614, to be entitled to be subrogated to the rights of creditors whose judgments he has satisfied against the real estate of his copartner in the hands of a subsequent purchaser, to the extent to which his payments exceed his proportional part of the liability. The authorities as to the right of a partner who pays firm debts to subrogation against his copartner are reviewed in note to this case.

Perjury.

False testimony given in the course of proceedings which are merely erroneous or voidable, even if there are such irregularities or defects as would require a reversal of the cause on appeal, is held in Morford *v.* Territory (Okla.) 54 L. R. A. 513, to constitute perjury, if material.

Physicians.

A statute authorizing the state board of

health to revoke a physician's license for grossly unprofessional conduct likely to deceive or defraud the public, without fixing any standard by which such fact shall be determined, is held, in Mathews *v.* Murphy (Ky.) 54 L. R. A. 415, to be void.

Police.

Promotion of a police officer for acts of personal heroism is held in People ex rel. Leary *v.* Knox (N. Y.) 54 L. R. A. 589, not to be prohibited by the constitutional provision that promotions shall be made, when practicable, upon competitive examination.

Public Improvements.

Assessments for paving, made by apportioning the total cost of the work to the abutting lands according to frontage, is held in Barber Asphalt Pav. Co. *v.* French (Mo.) 54 L. R. A. 492, not to constitute a taking of property for public use without compensation or due process of law.

Railroads.

See MASTER AND SERVANT.

Sale.

The right of stoppage *in transitu* of a carload of lumber is held in Brewer Lumber Co. *v.* Boston & A. R. Co. (Mass.) 54 L. R. A. 435, not to be lost by the storage of the lumber by the carrier for failure to unload within the time required by its rules, when the freight charges remain unpaid, and the carrier has made no agreement to hold the property for the consignee.

Subrogation.

See PARTNERSHIP.

Trusts.

A person charged with the duty of selling corporation stock in order to raise a fund with which to pay encumbrances upon the property of the corporation, and who is himself the owner of one of the encumbrances, is held in Harrison *v.* Mulvane (Kan.) 54 L. R. A. 405, not to be the trustee as to the property of the corporation covered by the encumbrances, and forbidden to protect his own interests by buying the prior liens upon it.

Usury.

See BUILDING AND LOAN ASSOCIATIONS

Voters and Elections.

The inmates of a soldiers' home are held in Powell *v.* Spackman (Idaho) 54 L. R. A. 378, not to acquire, by reason of their presence in such home, and while kept at public expense, the right to vote in the county and precinct in which such institution is located.

Constitutional requirements of a written vote, and provisions for sorting and counting, are held in *Re* House Bill No. 1,291 (Mass.) 54 L. R. A. 430, not to preclude the use of a voting machine.

Waters.

Riparian owners along a stream of water, the flow of which has been diverted from its natural channel, or obstructed by a permanent dam, which has continued for the time necessary to establish a prescriptive right to perpetually maintain the same, who have improved their property in reliance upon the continuance thereof, are held in Kray *v.* Muggli (Minn.) 54 L. R. A. 473, to acquire a reciprocal right to have the artificial conditions remain undisturbed.

The right to appropriate the water of a spring which has no natural stream flowing therefrom is held in Brosnan *v.* Harris (Or.) 54 L. R. A. 628, to exist under a statute providing that all ditches constructed for the purpose of utilizing the spring waters of the state shall be governed by the same laws as ditches constructed for the purpose of utilizing the waters of running streams.

The right of a riparian proprietor to use the water for irrigating purposes is held in Jones *v.* Conn (Or.) 54 L. R. A. 630, not to be limited to the tract of land bordering on the stream, as first segregated and sold by the government, but to extend to lands lying back of such tract and purchased by him from other persons.

Wills.

An absolute gift, and not a trust, is held in Williams *v.* Committee of the Baptist Church of Baltimore (Md.) 54 L. R. A. 427, to be created by a will bequeathing a fund to a church and "suggesting" that it be used to complete the spire, or invested and the

a threatened nuisance, the erection of a building proposed to be used for legitimate

A statute authorizing the state board of

income used to carry on a church mission or for the benefit of the church poor.

A paper reading: "This is good to Miss Rubie Ferris for eight hundred dollars for care and attendance rendered by her to me in my last sickness. This eight hundred dollars is to be collected out of my estate after my death, provided, however, I die a bachelor,"—is held in Ferris *v.* Neville (Mich.) 54 L. R. A. 464, to be a will when it is duly executed as such.

Witnesses.

A woman suing to recover damages for the negligent killing of her husband, for the benefit of herself and her minor children by him, is held in Kolb *v.* Union R. Co. (R. I.) 54 L. R. A. 646, not to be compelled to testify on cross-examination to the fact that she has given birth to an illegitimate child since his death, for the purpose of affecting her credibility as a witness.

New Books.

"A Treatise on Guaranty Insurance." Including therein as Subsidiary Branches the Law of Fidelity, Commercial, and Judicial Insurances. By Thomas Gold Frost. (Little, Brown, & Co., Boston, Mass.) 1 Vol. $5.

"McCall's Clerk's Assistant." Sixth Edition. By H. B. Bradbury. (Banks Law Publishing Co., New York.) 1 Vol. $6.

"The United States Steel Corporation." Being a Study of Its Formation, Charter, By-Laws, and Management. By Horace L. Wilgus. (Callaghan & Co., Chicago, Ill.) 1 Vol. $2.50.

"Essays in Legal Ethics." By George W. Warvelle. (Callaghan & Co.) 1 Vol. $2.

"Notes on Texas Reports and Index-Digest of Texas Decisions." In Eight Volumes. Vol. 1 now ready. (Bancroft-Whitney Co., San Francisco, Cal.) Price per Vol. $7.50.

"Texas Notarial Manual and Form Book." By C. P. Smith. (Gammel Book Co., Austin, Tex.) 1 Vol. $4.

"White on Corporations." Fifth Edition. (Lawyers' Co-Operative Publishing Co., New York.) 1 Vol. $5.75.

"A Treatise on the Law of Attachment, Garnishment, Judgments, and Executions." By John R. Rood (For sale by L. C. P. Co., Rochester, N. Y.) 1 Vol. $3.

This book is composed of two parts. The first is a text tracing the progress of attachment and garnishment causes from beginning to end, and the second part is a collection of decisions upon the matters treated in the text. The text is not claimed to be exhaustive, but to give a comprehensive view of broad fundamental principles governing the subject, with a clear vision of the relations between the parts and of the successive steps in each proceeding. Though the text states only elementary rules, they are the rules the application of which must determine the cases. The author has had unusual opportunity to prepare this work, because of his experience in more voluminous writings on the same subject. It is not a hasty or experimental attempt, but is the carefully wrought product of extensive labor on the subject.

"Acts of General Assembly of Georgia, 1901." (C. J. Wellborn, State Librarian, Atlanta, Ga.) $1.25.

"Van Epps' Supplement to the Code (Ga.) of '95." (C. J. Wellborn.) $5.

Recent Articles in Law Journals and Reviews.

"Mistakes in Execution of Mutual Wills."—5 Law Notes, 204.

"Constitutional Prohibition of Local and Special Legislation in Pennsylvania."—41 American Law Register, N. S., 27.

"The Jurisdiction of the United States over Seditious Libel."—41 American Law Register, N. S., 1.

"The Rights of Striking Miners."—64 Albany Law Journal, 48.

"The Trustees' Right to Purchase the Trust Estate."—64 Albany Law Journal, 44.

"The Subjective Law in Relation to, and the Jurisprudential Significance of, the Recent Franchise Tax Law."—64 Albany Law Journal, 41.

"The Insular Decisions of December, 1901."—2 Columbia Law Review, 79.

"Expert Opinion as to Insurance Risk."—2 Columbia Law Review, 67.

"Subrogation and the Modes of Enforcing It."—54 Central Law Journal, 42.

"Charitable Uses in New York."—2 Columbia Law Review, 10.

"Formation of Contract *Inter Absentes*."—2 Columbia Law Review, 1.

"The Suicide Clause in Life Insurance Policies."—17 Chicago Law Journal, 97.

"Proposed Provisions against Fraudulent Divorces."—54 Central Law Journal, 104.

"Statutory Powers of Married Women as to Realty, Barring Title; Estoppel."—54 Central Law Journal, 66.

"Who Are Passengers."—54 Central Law Journal, 86.

"The Relation of Railroads to the Public."—6 Kansas City Bar Monthly, 1.

"On the Origin and Development of Law."—11 Yale Law Journal, 195.

"Legal Aspects of Hypnotism."—11 Yale Law Journal, 173.

"The Ripper Cases." (Local Self-Government)—15 Harvard Law Review, 468.

"Sir Samuel Romilly and Criminal Law Reform."—15 Harvard Law Review, 446.

"Foreclosure for Nonpayment of Interest."—54 Central Law Journal, 143.

"Protection to Contracts by the Due Process of Law Clauses in the Federal Constitution."—36 American Law Review, 70.

"Effect of Consolidation of Corporations upon Rights of Action against the Constituent Companies."—36 American Law Review, 60.

"The Aggregation of Humanity in Cities, and Some Consequent Municipal Regulations."—36 American Law Review, 36.

"Criminals and Their Treatment."—36 American Law Review, 10.

"Ought Punishment for Crime to be Abolished?"—1 Southern Law Review, 637.

"Checks as Assignments of Deposits in Banks."—19 Banking Law Journal, 75.

"Expert Testimony: Its Abuses and Uses."—41 American Law Register, N. S. 87.

"A Vendor's Right to Specific Performance."—41 American Law Register, N. S. 65.

The Humorous Side.

AN INDORSEMENT DILEMMA.—An indorsement of a negotiable note in the name of the payee by one who signed his own name with the mistic addition "Atty.," worked havoc in a recent Connecticut case. Suit was brought on the note by the indorsee and the indorsement was disputed. The attorney who signed the indorsement was placed on the stand, proved that he was authorized by the payee to negotiate the note and indorse it, and that he did so. The court, with unequaled astuteness, rendered the following decision: "Mr. F—— is a practising attorney at law, and of that fact the court must take judicial knowledge. Mr. F—— describes himself in the indorsement as attorney. Therefore, he made this indorsement as an attorney at law and by virtue of his authority as such. That was the contract. An attorney at law has no authority by virtue of his employment as such to indorse the notes belonging to his client. The indorsement is therefore void on its face. Nor can Mr. F—— be permitted to show that he acted as attorney in fact, for that would vary the terms of a written contract, and contravene a well-settled rule of evidence." Therefore the judge gave judgment for the defendant, with costs. This item is recommended for the humorous column by a Connecticut correspondent, though to the plaintiff, who had the costs to pay, the humor may not have been apparent.

STOLE WIFE, CHILD, DOG, AND OTHER CHATTELS.—The following warrant is sent us from Florida. It was actually issued, with the blanks properly filled:

"state of Florida
Countey of ————
——— justice district of ———
countey.

In the name of the state of florida to the sherife are any cunstabl of said countey

wharease —— —— has this day made cath before me that one —— —— on the 27th day of January A. D. 1902 in the countey and District afore said did steale and carey a way the foling things to wit my wifce —— —— an child the valeue $1000 Dollars 1 Dog $5 Dollars 1 cape & hat $10 cash $3 Dellars of the goods & cattles of —— —— then and thare being found feloniously did steale taake and cary away thease are tharefore to comand you forthwith to arest the said —— —— and bring him before —— ——— countey jugs to bee Delt with acording to law

given under my hand an seale this the 29 day of January A. D. 1902.

j of pease 2 th Districk."

Garnishment, Judgments, and Executions." | lumbia Law Review, 10.